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6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
7

8 UNITED STATES OF AMERICA,
Plaintiff,
9 vs.
10 SAMI ANWAR,
11 Defendant.

No. 4:18-CR-06054-001-EFS

UNITED STATES OF AMERICA'S
MOTION TO AUTHORIZE
PAYMENT FROM INMATE TRUST
ACCOUNT

Date: August 1, 2022
Without Oral Argument

14
15 The United States of America, by and through Vanessa R. Waldref, United
16 States Attorney, and Brian M. Donovan, Assistant United States Attorney, pursuant to
17 18 U.S.C. §§ 3613(a) and 3664(n), requests this Court to enter an order authorizing
18 the Bureau of Prisons to turn over to the Clerk of Court all of the funds held in the
19 inmate trust account for the above named Defendant, less \$200 to remain in the
20 account, as payment toward the criminal monetary penalties imposed in this case.¹ In
21 support of this motion, the United States provides the following:

22 1. The Defendant, SAMI ANWAR, was convicted of conspiracy to commit
23 wire fraud, conspiracy to commit mail fraud, wire fraud, mail fraud, fraudulently
24 obtaining controlled substances, furnishing false or fraudulent material information, in
25

26 ¹ According to the most recent account balance obtained from Bureau of Prisons, the
27 inmate account balance for the Defendant is approximately \$3,010.54.

1 violation of 18 U.S.C. § 1349, 18 U.S.C. § 1343, 18 U.S.C. § 1341, 21 U.S.C. §
2 843(a)(3), 21 U.S.C. § 843(a)(4)(A).

3 2. On October 1, 2020, this Court sentenced the Defendant to a 340-month
4 term of imprisonment followed by 36 months of supervised release. Additionally, the
5 Defendant was ordered to pay \$1,895,250.10 in restitution, and \$4,700.00 in special
6 penalty assessments.

7 3. As of September 30, 2020, the Defendant has paid \$125.00 toward the
8 special penalty assessments and/or restitution, leaving a balance of \$1,895,125.10.

9 4. The Defendant remains in custody at the United States Penitentiary, in
10 Sheridan, OR. He is scheduled to be released from federal custody on February 1,
11 2049.

12 5. The United States Attorney's Office for this district was recently
13 informed that the Defendant currently maintains funds in his inmate trust account
14 maintained by the Bureau of Prisons ("BOP")². In accordance with its regulations, the
15 BOP deposited these funds into the Defendant's trust account, and it currently
16 maintains in its possession, custody, or control approximately \$3,010.54 in funds
17 belonging to the Defendant. By this motion, the United States seeks entry of an order
18 authorizing the BOP to turn over these funds to the Clerk of Court as payment toward
19 the Defendant's outstanding criminal monetary penalties.

20
21
22 ² The purpose of inmate trust account or commissary account is to allow the BOP to
23 maintain inmates' monies while they are incarcerated, including monies received by
24 inmates from prison employment and outside sources. 28 C.F.R. §§ 506.1, 545.11.
25 Family, friends, or other sources must deposit funds for the benefit of the inmate into
26 these accounts. *Id.* Deposits intended for the inmates' account must be mailed directly
27 to the BOP's centralized commissary account. 28 C.F.R. § 540.23.

1 6. Title 18, United States Code, Section 3613 sets forth the procedures for
 2 the United States to enforce criminal monetary penalties, including restitution and
 3 criminal fines. *See* 18 U.S.C. §§ 3613(a), 3613(f) (United States enforces restitution in
 4 the same manner as a fine). In particular, the statute provides that a sentence imposing
 5 restitution and/or a fine constitutes a lien in favor of the United States against all of
 6 the Defendant's property and rights to property. 18 U.S.C. § 3613(c).

7 Thus, the United States' lien attaches to the Defendant's interest in any funds
 8 held by the BOP in his inmate trust account. *See also* 18 U.S.C. § 3613(a) (United
 9 States enforces restitution against all property and rights to property of the
 10 Defendant); 18 U.S.C. § 3664(m) (United States may use all available and reasonable
 11 means to collect restitution). Also, pursuant to the Crime Victim Rights Act, the
 12 victims of the Defendant's crimes are entitled to full and timely restitution as provided
 13 by law. *See* 18 U.S.C. § 3771(a)(6).

14 7. More importantly, the Mandatory Victims Restitution Act, 18 U.S.C. §
 15 3663A, *et seq.* ("MVRA"), which applies here, requires that the Defendant's resources
 16 received from any source during his term of incarceration must be applied to his
 17 outstanding monetary penalties.

18 Specifically, 18 U.S.C. § 3664(n), which provides the procedures for the
 19 imposition and enforcement of fines and restitution, states:

20 If a person obligated to provide restitution, or pay a fine,
 21 receives substantial resources from any source, including
 22 inheritance, settlement, or other judgment, *during a period of*
 23 *incarceration*, such person *shall be required to apply the value*
 24 *of such resources to any restitution or fine still owed.*

25 18 U.S.C. § 3664(n) (emphasis added). *See also United States v. Khazraeinazmpour*,
 26 2015 WL 5311650, at *1 (D. Minn. Sept. 11, 2015) (§ 3664(n) “requires that a
 27 defendant's resources received from any source during a defendant's term of
 28 incarceration must be applied to their outstanding restitution obligation”).

1 8. The funds in the Defendant's inmate account in the amount of \$3,010.54
2 are "substantial" within the meaning of § 3664(n). Although the statute does not
3 define the term "substantial," courts have found funds of similar amount satisfies the
4 statute. *See, e.g. United States v. Rand*, 924 F.3d 140, 141 (7th Cir. 2019) (accepting
5 argument that approximately \$1,684.57 in inmate trust account was "substantial
6 resource" requiring turnover, even on \$96 million in outstanding restitution); *United*
7 *States v. Lemberger*, 673 F. App'x 579, 579–80 (7th Cir. 2017) (government's
8 § 3664(n) turnover request was lawful since defendant was "'a person obligated to pay
9 restitution' who had a 'substantial' sum in his inmate trust account" in the form of
10 \$4,650); *United States v. Pittman*, 2022 WL 1173406 (M.D.N.C. Apr. 20, 2022)
11 (turnover of \$3,001.14 appropriate as "[s]everal courts have held that the
12 accumulation of over \$1,000 constitutes a material change affecting a defendant-
13 inmate's ability to pay restitution under § 3664(k) or substantial resources under §
14 3664(n)"); *United States v. Messic*, 2022 WL 1028615 (S.D. Ill. Apr. 6, 2022) (\$1,400
15 in economic stimulus funds considered "substantial"); *United States v. Norwood*, 2020
16 WL 773065, at *4 (D.N.J. Feb. 18, 2020) (granting government's turnover motion
17 because of "substantial resources" of \$5,931.40 in defendant's inmate account);
18 *United States v. Brown*, 2017 WL 3493021, at *3 (S.D. Ill. Aug. 15, 2017) (finding
19 approximately \$4,500 in inmate account was "substantial resource" and granting
20 motion to turn over \$4,060 from the account); *United States v. Korbe*, No. 2020 WL
21 1929256, at *4 (W.D. Pa. Apr. 21, 2020) (funds in the amount of \$5,915.07 in
22 defendant's inmate account qualifies as "substantial" under § 3664(n)); *United States*
23 *v. Brewer*, 2016 WL 6652996, at *4 (N.D. Tex. Oct. 21, 2016), *report and*
24 *recommendation adopted*, 2016 WL 6650948 (N.D. Tex. Nov. 10, 2016), *aff'd*, 699 F.
25 App'x 318 (5th Cir. 2017) (turnover order granted where defendant had \$4,000 in
26 inmate account and Government agreed to leave \$200 in the account); *United States v.*
27 *Poff*, 2016 WL 3079001, at *6 (W.D. Wash. June 1, 2016) (Robart, J.), *aff'd*, 727 F.

1 App'x 249 (9th Cir. 2018), *cert. granted, judgment vacated*, 139 S. Ct. 790, 202 L. Ed.
2 2d 561 (2019), *aff'd in part and remanded on other grounds*, 781 F. App'x 593 (9th
3 Cir. 2019) (\$2,663.05 satisfies the ordinary meaning of the term “substantial” funds).

4 9. The source of funds is also material to a motion to turnover inmate funds.
5 In *Poff*, 781 F. App'x at 594-595, the Ninth Circuit adopted the Fifth Circuit's analysis
6 in *United States v. Hughes*, 914 F.3d 947 (5th Cir. 2019), that § 3664(n) “refers to
7 windfalls or sudden financial injections ... that become ‘suddenly available’” to the
8 defendant. *Hughes*, 914 F.3d at 951(citation omitted). In adoption *Hughes*’ reasoning,
9 the Ninth Circuit clarified, however, that § 3664(n) is not limited only to “unexpected
10 windfalls,” but the funds subject to turnover should be of a lump-sum character rather
11 than regular, consistent deposits into the inmate account. *See Poff*, 781 F. App'x at
12 595, n.3. Thus, § 3664(n) does not apply to “periodically paid prison wages.” *Poff*,
13 781 F. App'x at 595 (“To the extent any of Poff’s \$2,663.05 account balance is
14 comprised of accumulated prison wages, we agree with the Fifth Circuit that those
15 funds do not qualify under § 3664(n)”); *Hughes*, 914 F.3d at 951.

16 Consistent with *Poff*, which found § 3664(n) is not limited only to “unexpected
17 windfalls,” the source of funds is not limited to only an “inheritance, settlement, or
18 other judgment.” Rather, “the list in § 3664(n) is non-exhaustive, and [courts] have
19 held that the provision permits seizure of funds from any source—no matter how
20 acquired or for what purpose—to satisfy restitution.” *United States v. Black*, 2022 WL
21 1011676, *2 (7th Cir. Apr. 5, 2022). As such, turnover of inmate funds consisting of
22 deposits of from an inmate’s family or friends for living expenses is appropriate if it
23 constitutes a “substantial” sum.

24 10. Defendant currently has approximately \$3,010.54 in his inmate account.
25 The Government seeks turnover of the remaining funds in Defendant’s inmate
26 account, less \$200 to remain in the account. Defendant has earned \$27.11 in prison
27

1 wages. Thus, leaving \$200 in the Defendant's inmate account satisfies the
2 requirements of *Poff* and *Hughes*.

3 11. The United States further submits that an order authorizing the turnover
4 of the Defendant's property is appropriate here, and the United States is not required
5 to rely upon other formal collection remedies such as garnishment of or execution
6 upon property to obtain these funds. "Section 3664(n) is a self-executing provision as
7 long as the government shows that a person obligated to provide restitution receives
8 'substantial resources' while incarcerated." *Kobre*, 2020 WL 1929256 at *3 (Section
9 3664(n) triggers an automatic payment obligation which does not require other
10 garnishments or motions to collect the funds); *see also United States v. Bratton-Bey*,
11 564 F. App'x 28, 29 (4th Cir. 2014) (Government is not required a file a motion for
12 modification of payment of 18 U.S.C. § 3664(k) to pursue inmate funds). The funds at
13 issue currently are in the United States' possession, and the United States has a valid
14 lien over this property, thus they are subject to a turnover order pursuant to § 3664(n).

15 12. In addition, turnover of the inmate funds is permissible regardless of
16 whether Defendant is current on the payment plan ordered in the judgment. *See, e.g.,*
17 *Poff*, 2016 WL 3079001 at *6 ("numerous courts, including district courts in the Ninth
18 Circuit, have ruled that 'any schedule established by a court for payment of restitution
19 does not prevent the United States from levying on a defendant's property to satisfy
20 the order of restitution'") (citations omitted); *Kobre*, 2020 WL 1929256 at *6
21 ("because the installment plan acts as simply a floor, the payment schedule may be
22 accelerated" through turnover of inmate funds); *Black*, 2022 WL 1011676 at *2 ("the
23 payment plan is not a cap on collections and does not exclude [defendant's] trust
24 account").

25 13. Because the property is cash, it does not fall within any applicable
26 categories of the exempt property that a Defendant may claim in a criminal case. *See*
27 18 U.S.C. § 3613(a)(1) (setting forth the applicable IRS property exemptions for

1 criminal cases). For criminal debts such as restitution, federal law provides that only
2 very limited categories of property are exempt from collection. 18 U.S.C. § 3613(a)(l).

3 14. The Defendant also failed to notify this Court and the United States
4 Attorney's Office that he acquired these funds as required by statute and the Judgment
5 entered on October 1, 2020. ECF No. 241. Federal law states that the Defendant must
6 notify the Court and the United States Attorney's Office of any material change in his
7 "economic circumstances" that might affect the Defendant's ability to pay restitution.
8 18 U.S.C. § 3664(k). "Upon receipt of such notification, the court may, on its own
9 motion, or the motion of any party, including the victim, adjust the payment schedule,
10 or require immediate payment in full, as the interests of justice require." *Id.* The
11 receipt of \$3,010.54 in funds by the Defendant certainly constitutes a material change
12 in his "economic circumstances" that affects his ability to pay restitution and/or any
13 fines under § 3664(k).

14 15. The United States has served the Defendant with a copy of this motion,
15 and he may object to the United States' intended use of his property. The United States
16 is not aware of any other party who may claim an interest in this property.

17 16. The United States submits that the requested relief is reasonable and
18 appropriate in this instance where the Defendant has accumulated significant funds in
19 his inmate trust account yet has applied \$125.00 toward his monetary penalties. Also,
20 without this relief, the BOP will be required to allow the Defendant access to these
21 funds. This would allow the Defendant, or others, the opportunity to possibly
22 dissipate, conceal, or transfer the funds without first paying his monetary penalties.

23 17. The Defendant is scheduled to remain incarcerated until February 1,
24 2049. The Defendant was convicted of serious offenses, and his/her restitution
25 obligations and/or criminal fines are due and owing. Accordingly, the United States
26 requests that the Court grant its motion and order that the BOP turn over the funds in
27 the Defendant's inmate trust account to the Clerk of Court to be applied to partially

1 satisfy the Defendant's criminal restitution obligations and/or criminal fines.

2 Accordingly, the United States requests that the Court grant its motion and
3 order that the BOP turn over all of the funds in the Defendant's inmate trust account,
4 less \$200 to remain in the Defendant's account, to the Clerk of Court to be applied to
5 partially satisfy the Defendant's restitution obligations and/or criminal fines.

6 WHEREFORE, for the reasons explained above, the United States requests that
7 this Court grant its motion.

8 DATED June 30, 2022.

9 Vanessa R. Waldref
United States Attorney

10 s/ Brian M. Donovan
11 Brian M. Donovan
12 Assistant United States Attorney

13 **CERTIFICATE OF SERVICE**

14
15 I hereby certify that on June 30, 2022, I electronically filed the foregoing with
16 the Clerk of the Court using the CM/ECF System which will send notification of such
17 filing to the following CM/ECF participant(s):

18 Jeffrey Finer
19 Attorney for Sami Anwar
20 jfiner@ksblit.legal

21
22 s/ Brian M. Donovan
23 Brian M. Donovan
24 Assistant United States Attorney